

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In Re Grand Jury Investigation	§	
	§	NO. MC16-1947
	§	

AND

United States Of America	§	
	§	
VS.	§	NO. 4:18-CR-00575-1
	§	
Jack Stephen Pursley	§	

UNOPPOSED
MOTION TO UNSEAL ALL DOCUMENTS FILED IN CAUSE NO.
MC16-1947 AND TO INCLUDE THEM IN THE RECORD ON APPEAL
IN CAUSE NO. 4:18-CR-00575-1

TO THE HONORABLE JUDGE SIM LAKE AND LYNN N. HUGHES, UNITED STATES DISTRICT JUDGES:

COMES NOW JACK STEPHEN PURSLEY, by and through his counsel of record on appeal (from his conviction in Cause No. 4:18-CR-00575-1) and presents this unopposed motion to unseal the pleadings in Cause No. MC16-1947 so that they may be included in the record on appeal in Cause No. 4:18-CR-00575-1, and would respectfully show the following:

I.

On or about August 23, 2016, the government filed an exparte application, supported by a Declaration of Internal Revenue Service Special Agent Stephen

Caivano in Cause No. MC16-1947. The application, which undersigned counsel has never seen, apparently sought an order suspending the statute of limitations under the authority of 18 U.S.C. Section 3292. Because that exparte application related to a then pending grand jury investigation of Jack Stephen Pursley, it was filed under seal and remains under seal to this date.

On or about August 24, 2016, the Honorable Sim Lake entered an order granting the government's exparte application and suspending the statute of limitations under 18 U.S.C. Section 3292.

Over two years later, on September 20, 2018, Jack Stephen Pursley was indicted in Cause No. 4:18-CR-00575-1. During the course of the proceedings in Cause No. 4:18-CR-00575-1, Judge Lake's order of August 24, 2016 was the subject of various defensive motions (written and oral, as well as responses by the government, written and oral).¹ From what undersigned counsel has seen to date, the apparent basis of the denial of Pursley's defensive motions (including a requested jury instruction on the statute of limitations) was the reliance by Judge Hughes upon Judge Lake's order of August 24, 2016.

However, to date, undersigned has not been able to locate a copy of the actual

¹ Mr. Pursley was represented by different counsel in the pretrial and trial stages in Cause No. 4:18-cr-00575-1.

pleadings (or Judge Lake's order) from Cause No. MC16-1947 anywhere in the voluminous pleadings filed by both parties in Cause No. 4:18-CR-00575-1,² although the ex parte application and declaration and Judge Lake's order are most certainly referred to (both in the pleadings, pretrial hearing(s) and at trial).

Jack Stephen Pursley has been convicted and sentenced. On August 26, 2020, undersigned counsel timely filed a notice of appeal. The appeal has been assigned Cause No. 20-20454 in the United States Court of Appeals. In due course, the record on appeal will be consecutively numbered and made available to counsel for Pursley and the government.

Because undersigned counsel has been alerted to the issue that the extension of the statute of limitations granted by Judge Lake's order of August 24, 2016 (and the attendant ramifications of that order on proceedings during Pursley's criminal case) needs to be reviewed (potentially as the sole issue on appeal), this motion is being filed. In a nutshell, all documents filed in Cause No. MC16-1947, as well as the docket sheet, should be unsealed and ordered to be filed in Cause No. 4:18-CR-00575-1.

Undersigned counsel has conferred with counsel for the government (Mr. Sean

² This is based on undersigned counsel's initial (and non-exhaustive) review of the pleadings filed in Cause No. 4:18-CR-00575-1.

Beaty) who has authorized undersigned counsel to represent to both Judge Lake and Judge Hughes that the government is not opposed to the relief requested herein. Mr. Beaty also informed undersigned counsel that he does not believe there was a hearing held in Cause No. MC16-1947, but undersigned cannot independently confirm his belief inasmuch as the docket sheet in Cause No. MC16-1947 is sealed (and undersigned counsel cannot access it via pacer or the Southern District's electronic filing system). If in fact there was a hearing in Cause No. MC16-1947, undersigned counsel must also contact the appropriate court reporter to make financial arrangements to transcribe it and designate it on a transcript order form.

The relief sought herein is being requested to ensure that the appellate record is complete so that Mr. Pursley can hopefully be afforded effective assistance of counsel on appeal. This motion is being filed in both of these cause numbers and there are two separate orders, one order for Judge Lake and a separate order for Judge Hughes.

WHEREFORE, PREMISES CONSIDERED, Jack Stephen Pursley respectfully prays that the relief requested herein be granted.

Respectfully submitted,

/s/David L. Botsford
DAVID L. BOTSFORD
State Bar No. 02687950

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512/479-8030 (Tel)
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CERTIFICATE OF CONFERENCE

I hereby certify that I have conferred with counsel for the government, Mr. Sean Beaty, and Mr. Beaty is unopposed to the relief requested herein.

/s/David L.Botsford
DAVID L. BOTSFORD

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing document was distributed to all counsel of record via the CM/ECF system on the same day it was electronically filed with the Clerk of the Court.

/s/David L.Botsford
DAVID L. BOTSFORD

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ORDER

BEFORE THE COURT is Jack Stephen Pursley's unopposed motion to unseal all documents and the docket sheet in Cause No. MC16-1947 and to include them in the record on appeal in Cause No. 4:18-CR-00575-1.

The Court hereby GRANTS the motion and orders the District Clerk to unseal the docket sheet and all documents filed in Cause No. MC16-1947.

Signed September ____, 2020.

Sim Lake
United States District Judge

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ORDER

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The Court hereby GRANTS the motion and orders the District Clerk to include in the record in Cause No. 4:18-CR-00575-1 the docket sheet and all documents filed in Cause No. MC16-1947.

Signed September ____, 2020.

Lynn N. Hughes
United States District Judge